

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-882

March 24, 2000

CENTRAL MAINE POWER COMPANY
Re: Application for Approval of Affiliated
Interest Transaction with MaineCom
Services

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

In this Order we approve a Stipulation filed on March 15, 2000 between Central Maine Power Company (CMP), and the Public Advocate. The Stipulation asks that the Commission approve pursuant to 35-A M.R.S.A. § 707 the affiliated interest agreement between MaineCom Services (MaineCom) and CMP, filed on March 13, 2000. It also proposes a ratemaking treatment for the revenues to which CMP is entitled pursuant to the Agreement. Because we find that the Agreement is not adverse to the public interest, we approve the Agreement. We further conclude that the ratemaking treatment proposed in the Stipulation is consistent with Commission policy.

II. PROCEDURAL HISTORY

On December 15, 1999, Central Mine Power Company (CMP) filed a redacted Petition for Approval of Affiliated Interest Transaction with MaineCom Services for the Use of Fibers Within a Fiber Optic Cable.¹ The Public Advocate and Bangor Hydro-Electric Company (BHE) intervened in this proceeding. CMP initially filed a term sheet and later filed an Agreement, which supersedes the Term Sheet. The Agreement was revised in the course of the proceeding. The Examiner issued Temporary Protective Order No. 1, which provides protection for the price terms under the Agreement. No party objected to the confidential treatment sought by CMP. The Public Advocate and Bangor Hydro-Electric Company intervened in the proceeding. The Commission held a technical conference and two telephone conferences in which the parties and the Advisor's discussed the transaction at issue. As a result of these conferences, the Public Advocate and Central Maine Power filed on March 15, 2000 the Stipulation approved herein.² Counsel for BHE represents that BHE takes no position on the Stipulation.

¹ MaineCom is an affiliate of CMP.

² The stipulation filed on March 15, 2000 supersedes a stipulation filed on March 13, 2000.

III. BACKGROUND

At the technical conference, CMP explained that the transaction at issue arose for a transmission upgrade it undertook in Western Maine. As part of the upgrade, CMP installed its own fiber optic cable along the upgraded section of transmission line for the purpose of CMP's internal communication needs. The Company determined that it would set aside 12 fibers for CMP's internal use and added an additional 12 fibers that it could lease to another entity.

IV. DISCUSSION

The Agreement provides for the lease to MaineCom strands of fiber-optic cable installed on CMP's transmission line structures between Livermore Falls, Maine and Rumford, Maine a distance of 21.5 miles. Under the Agreement, MaineCom is required at a minimum to lease at least four fibers between March 1, 2000 and April 15, 2010. MaineCom also has an option to execute an Indefeasible Right to Use (IRU) for 12 fibers in the cable. The term of the IRU would be approximately eight years depending on the exact date of the closing on the IRU. The term of the IRU may be extended by mutual written agreement of MaineCom or CMP.³ If it does not exercise the IRU option, MaineCom will continue leasing until April 15, 2010, the number of fibers that it is leasing as of June 15, 2002.

Since the lease provides for a monthly per-fiber fee while the IRU provides for an annual IRU purchase price. The minimum and maximum amount of total fees under the contract are comparable with the license fees provided for in affiliated transactions between CMP and MaineCom and CMP and FiveCom (now NEON) approved in Dockets 96-749 and 96-537 respectively. In addition, CMP produced a fiber right-of-way study. The prices received by CMP under the contract are within range of prices suggested by the study. The Agreement further provides that the grant to MaineCom is not exclusive that it does not restrict CMP "from using, or permitting others to use, CMP's Structures, land easements and/or rights-of -way for any purpose."

The Stipulation in this case provides for above-the line ratemaking treatment for the revenues CMP derives from this Agreement net of the cost of purchasing and installing the additional fiber. We view this treatment as providing to ratepayers an approximation of the market value of the use by MaineCom of CMP's rights of way. See Dk. 99-155 Order; see also 35-A M.R.S.A § 707(3)(G); MPUC Rules Ch. 820 § 4.

³ We expect CMP to request affiliated transaction approval if the parties agree to an extension of the Agreement.

In considering whether to approve a stipulation we consider the following criteria:

- 1) whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) whether the process that led to the stipulation was fair to all parties; and
- 3) whether the stipulated result is reasonable and is not contrary to legislative mandate.⁴

Consumers Maine Water Company, Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739, Order Approving Stipulation (July 3, 1997) (citations omitted).

We conclude that the Stipulation meets the above standards. and is consistent with Commission policy. We further find that approval of the underlying Agreement and the Stipulation is not adverse to the public interest . Accordingly we approve the Stipulation and the affiliated interest agreement appended to the Stipulation.

Dated at Augusta, Maine, this 24th day of March, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

⁴In addition, we recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *Id.*

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

Re: CENTRAL MAINE POWER COMPANY;)
Application for Approval of Affiliated Interest) Docket No. 99-882
Transaction with MaineCom Services)

Stipulation

Following the Case/Technical Conference held on February 10, 2000 in Docket No. 99-882, Central Maine Power Company ("CMP") provided responses to the oral data requests. In response to ODR-01-02, and ADR-02 CMP and MaineCom Services agreed to amend the Agreement to delete any rights of MaineCom Services to more than 12 fibers. The Agreement as amended is attached to this Stipulation.

The undersigned parties hereby agree to the following terms to resolve all issues in Docket No. 99-882.

1. Any revenues to which CMP is entitled pursuant to the Agreement appended to this Stipulation ("Agreement"), net of the cost of purchasing and installing the additional 12 fibers that are available to MaineCom pursuant to the Agreement, shall be accounted for above the line.
2. The undersigned parties respectfully request that the Commission issue an order approving the attached amended Agreement with a finding that the Agreement is not adverse to the public interest, as required under 35-A M.R.S.A. §707.
3. This Stipulation shall not constitute precedent as to any matter of law or fact, nor shall it prevent any party from making any contention or exercising any right in any other Commission proceeding.
4. The terms of the Agreement attached to this Stipulation are incorporated herein by reference and shall be considered as a part of this Stipulation as if they were fully set forth in the body of this Stipulation.
5. This Stipulation is to be considered by the Commission for adoption as an integrated solution to the issues in this proceeding. This Stipulation shall be null and void and not binding on the Parties if the Commission does not adopt this Stipulation without material modification.

IN WITNESS WHEREOF, the undersigned Parties have caused this Stipulation to be executed by their attorneys or representatives as of March 14, 2000.

Central Maine Power Company

Office of the Public Advocate

By: _____
A. Laurence Ralph

By: _____
Wayne R. Jortner